

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

IN THE MATTER OF

RICHARD DALE GEE,

DEBTOR.

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CASE NO. 05-50461 HCD
CHAPTER 13

ORDER

At South Bend, Indiana, on December 21, 2005.

Before the court are the Trustee's Motion to Reconsider, filed by the Standing Chapter 13 Trustee Debra L. Miller on December 12, 2005, and the Debtor's Motion to Reconsider, filed by the debtor Richard Dale Gee on December 14, 2005. Both Motions ask the court to reconsider its Order of December 9, 2005, which *sua sponte* dismissed the chapter 13 case of the debtor without prejudice. In its Order, the court noted that the debtor's chapter 7 discharge was entered on December 5, 2005, and that his chapter 13 petition was filed on December 7, 2005. It dismissed the chapter 13 case pursuant to 11 U.S.C. § 1328(f), which provides that a debtor is not entitled to a discharge under chapter 13 if he has had a chapter 7 discharge during the four-year period preceding the filing of the new chapter 13 case. *See* R. 7, Order of December 9, 2005.

In the motions to reconsider, the Trustee and the debtor point out that a debtor may file a chapter 13 bankruptcy for reasons other than the desire to obtain a discharge. In this case, the debtor filed a chapter 13 case in order to save his family home from a sheriff's sale, to cure the arrearage on his mortgage, and to restructure the mortgage debt. According to each motion, the debtor is eligible to be a debtor, pursuant to § 109, but he is not eligible to obtain a discharge, pursuant to § 1328(f). The Trustee assures the court that her office tracks such debtors and takes different actions, using new forms, at the end of bankruptcy for those debtors. The Trustee and the debtor ask the court to allow the debtor to file a chapter 13 petition under these circumstances.

Motions to reconsider that are filed within ten days of the court's Order are treated as motions to alter or amend the judgment. *See* Fed. R. Bankr. P. 9023; Fed. R. Civ. P. 59(e) ("Any motion to alter or amend a

judgment shall be filed no later than 10 days after entry of the judgment.”); *see also In re DeLaughter*, 295 B.R. 317, 319 (Bankr. N.D. Ind. 2003). To succeed in a Rule 59(e) motion, a party is required to establish clearly that there was a manifest error of law, an intervening change in the controlling law, or newly discovered evidence. *See Romo v. Gulf Stream Coach, Inc.*, 250 F.3d 1119, 1121 n.3 (7th Cir. 2001) (citations omitted). The burden is on the party seeking reconsideration to demonstrate the existence of manifest errors of fact or law. *See In re Nosker*, 267 B.R. 555, 565 (Bankr. S.D. Ohio 2001); *cf. Lekas v. Briley*, 405 F.3d 602, 615 n.8 (7th Cir. 2005).

Based upon the arguments of the movants, the court has reconsidered its ruling. In the view of the court, the parties are asking the court to read quite literally § 1328(f), a new provision under the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. In pertinent part, it provides:

(f) . . . [T]he court shall not grant a discharge of all debts provided for in the plan or disallowed under section 502, if the debtor has received a discharge —

(1) in a case filed under chapter 7, 11 or 12 of this title during the 4-year period preceding the date of the order for relief under this chapter.

11 U.S.C. § 1328(f). The court finds it significant that the debtor is not seeking a discharge of his debts. Instead, he wants to restructure his mortgage debt. Therefore, the court will have no reason, in the future, to grant or to deny a discharge to the debtor under chapter 13. Accordingly, the court determines that § 1328(f) is not applicable in this case.

The court grants the Motions to Reconsider filed by the Trustee and the Debtor. It now sets aside its Order of December 9, 2005, dismissing the debtor’s chapter 13 case, and reinstates Case Number 05-50461.

SO ORDERED.

/s/ HARRY C. DEES, JR.
Harry C. Dees, Jr., Chief Judge
United States Bankruptcy Court